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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,164	01/20/2004	Richard L. Weaver	433-11US	6642
23716 7590 05/31/2007 ANTHONY ASQUITH 28-461 COLUMBIA STREET WEST WATERLOO, ON N2T 2P5 CANADA			EXAMINER ABBOTT, YVONNE RENEE	
			ART UNIT 3644	PAPER NUMBER
			MAIL DATE 05/31/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/759,164

Applicant(s)

WEAVER, RICHARD L.

Examiner

Yvonne R. Abbott

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3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7-16 is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, and 17-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, see Remarks, filed 3/13/07, with respect to the rejection(s) of claim(s) 1 under 35 U.S.C. 112, second paragraph have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. Further, the rejection based on the Collis reference is withdrawn. However, upon further consideration by this Examiner, a new ground(s) of rejection is made.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 2, 4,6, 17, 18, 20, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tutelian (4,831,966) in view of Weaver (6,338,316). Tutelian shows an the apparatus includes a plurality of separate individual cages (31); in respect of each one of the cages of the plurality; the individual cage is physically suitable for containing and transporting live poultry on a road-transport truck; the cage includes a support-framework, including uprights and cross- members fixed together in an open rectangular configuration; the individual cage is of such length, width, and height dimensions that the plurality of cages can be stacked upright on the truck, with live

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poultry birds contained therein the individual cage is a sturdy, stand-alone, self-contained structure, whereby each individual cage, with poultry birds contained therein, is physically capable of being picked up as a unit, and of being lifted onto the truck as a unit; the support-framework is so configured as to define poultry-receiving tray-chambers, which are arranged, in the cage, in a plurality of rows, and a plurality of columns; in respect of each tray-chamber of each cage; the tray-chamber is rectangular, being defined by a floor (35), left and right side panels, a roof panel, a rear closure panel, and a front door or gate, of the support-framework; the floor, left and right side panels, the roof panel, and the rear closure panel, are fixed into the support-framework, and remain so fixed throughout operation of the cage to load, unload, and transport, the birds; the front door is pivotable with respect to the support-framework, between an open position and a closed position; in the open position of the front door, poultry birds can pass into and out of the tray-chamber through the open door, and in the closed position of the front door, the tray-chamber is then closed, whereby poultry birds cannot pass into nor out of the tray-chamber of the support-framework; the tray-chamber is so configured as to be suitable for receiving several poultry birds therein; the panels of the tray-chamber having openings of such large size and configuration that the tray-chamber can be characterized as light and well-ventilated, the openings being also of such small size and configuration as substantially to prevent the protrusion of body parts of the birds outside the tray-chamber; the floor of the tray-chamber extends from the front to the rear, and from the left side to the right side, of the tray-

chamber; the floor-panel is in such a location, in the tray-chamber, that birds being transported inside the tray-chamber have their feet in direct touching contact with the floor-panel; the floor-panel has no perforations; the floor-panel is of such form and robustness, and is so mounted in the support-framework, that, with several poultry birds contained in the tray-chamber, liquid entering the tray-chamber substantially cannot form pools, over substantially any portion of the upper surface of the floor panel with which the birds can come into contact. Tutelian, however, does not disclose that the floor-panel is made of plastic. Weaver teaches a molded thermoplastic drawer used for transporting poultry having a dome shaped floor. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use plastic material to make the floor of the Tutelian cage since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Further to use plastic would have been obvious since it is well known that plastic materials are sturdy, lighter weight for ease in lifting onto a truck, easier to maintain or clean, and less resistant to corrosion and deterioration. With respect to claim 2, the dome shaped floor taught by Weaver would have been obvious to provide in order to increase the load bearing capacity of the floor, thereby providing more support, increasing the structural integrity of the Tutelian structure, and lessening the chance of bending or breaking.

4. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tutelian in view of Weaver as applied to claim 1 above, and further in view of Kuster (4,046,107).

Tutelian discloses that the open framework of the cages prevents the birds from extending their heads and necks, and Weaver's cage has lattice work made of plastic that appears to be of sufficient width to resist snagging of the bird's feet. However, Kuster discloses a bird cage having a particular width between the wires that prevents snagging or catching of the birds claws (Abstract). It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate Kuster's width into the Weaver mesh to ensure the safety and lessen the chance of injury of the birds.

5. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tutelian in view of Weaver as applied to claim 1 above, and further in view of Giordano et al. (US 6,851,389). Tutelian discloses the claimed invention except there is no framework to support the cage structure on a forklift. Giordano discloses a similar poultry cage structure that teaches the addition of a forklift slot 5, allowing the user to move the structure with the ease of a forklift (Giordano, col.3, Ins.25-28). It would have been obvious to one having ordinary skill in the art at the time the invention was made to add a forklift slot to Tutelian's cage structure in order to facilitate movement of the structure with a forklift, and thereby lessening the need for manual labor.

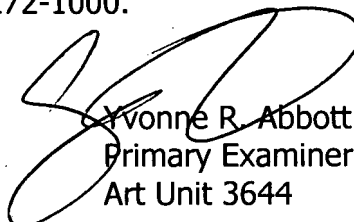
Allowable Subject Matter

6. Claims 7-16 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne R. Abbott whose telephone number is (571) 272-6896. The examiner can normally be reached on Monday-Thursday 9:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on (571) 272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Yvonne R. Abbott
Primary Examiner
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